Supreme Court, U.S.
FILED

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No. 06-

In the

Supreme Court of the United States

IN THE MATTER OF:
GEORGE CLIVE HOOK,
ATTORNEY-PETITIONER
NO. 1236432
VS.
MARY ROBINSON,
ADMINISTRATOR,
ILLINOIS ATTORNEY REGISTRATION
AND DISCIPLINARY COMMISSION

On Petition for Writ of Certiorari
To the
SUPREME COURT OF ILLINOIS
M.R. 21025
Having Denied Leave to File Exceptions
To the Report and Recommendation of
Disbarment by the Review Board
98 CH 50
and Disbarment.

APPENDIX

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STATE OF ILLINOIS
SUPREME COURT

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eleventh day of September, 2006.
Present: Robert R. Thomas, Chief Justice
Justice Charles S. Freeman
Justice Thomas L. Kilbride
Justice Lloyd A. Karmeier
Justice Thomas R. Fitzgerald
Justice Rita B. Garman
Justice Anne M. Burke-

On the twenty-first day of September, 2006, the Supreme Court entered the following judgment:
In re:
M.R. 21025

George Clive Hook
Presidential Towers1802-1
555 West Madison
Chicago, IL 60661-2514

Attorney Registration and Disciplinary Commission
98CH50

The petition by respondent George Clive Hook for leave to file exceptions to the report and recommendation of the Review

Board is denied. Respondent is disbarred, as recommended by the Review Board.

Order entered by the Court.

As Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, I certify that the foregoing is a true copy of the final order entered in this case.

IN WITNESS WHEREOF, I have herunto subscribed my name and affixed the Seal of said Court, this twenty-first day of September, 2006

SEAL

State

/s/ Julean Hornyak, Clerk
Supreme Court of the
of Illiois

In re George Clive Hook
Respondent-Appellant

Commission No. 98 CH 50

SYNOPSIS OF REVIEW BOARD REPORT AND RECOMMENDATION
(May 16, 2006)

Respondent, George Clive Hook, was convicted in 1997 of wire fraud, theft, and money laundering. Following his conviction, the Administrator filed a complaint against him pursuant to Supreme Court Rule 761(d), charging him with committing criminal acts reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects; engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and engaging in conduct that is prejudicial to the administration of justice and that tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute. Hook denied most of the factual allegations in the complaint and denied all allegations of misconduct.

The Hearing Board found that the Administrator proved all of the charged misconduct and recommended that Hook be disbarred.

The matter came before the Review Board on Hook's exceptions. He argued that (1) the Hearing Board failed to consider his actual conduct, (2) his conviction should not have been given conclusive effect, (3) the Hearing Board improperly considered his lack of remorse as an aggravating factor, and (4) disbarment was not warranted.

Declining to go behind Hook's criminal conviction, the

Review Board determined that the Hearing Board gave proper consideration to Hook's conviction and his actual conduct. The Review Board recommended that Hook be disbarred.

THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:
GEORGE CLIVE HOOK,
Respondent-Appellant,

Commission No. 98

CH 50

No. 1256432.

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

In 1997, Respondent-Appellant, George Clive Hook, was convicted in federal court of wire fraud, theft, and money laundering. Following his conviction, the Administrator-Appellee filed a complaint against him pursuant to Supreme Court Rule 761(d) (134 Ill.2d R. 761(d)), alleging that he (1) committed criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer in other respects; (2) engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation; and (3) engaged in conduct prejudicial to the administration of justice and tending to bring the courts or the legal profession into disrepute. Respondent denied almost all of the factual allegations in the complaint and denied all allegations of misconduct.

Following a hearing, the Hearing Board found that

Respondent committed all of the charged misconduct and recommended that he be disbarred.

Before the Review Board, Respondent argues that (1) the Hearing Board's recommendation was not based on his actual conduct and is therefore invalid, (2) the Hearing Board should not have afforded his conviction the conclusive effect prescribed in Rule 761(f); (3) the Hearing Board improperly considered his lack of remorse to be a factor in aggravation; and (4) disbarment is not warranted. The facts pertaining to Respondent's conviction and his appeal thereof are set forth in detail in United States v. Hook, 195 F.3d 299 (7th Cir. 1999).

Briefly, Respondent and Carmen Viana, the owner, chairperson and CEO of Wittek Industries, Inc. (Wittek), engaged in a scheme to obtain funds from one of Wittek's employee benefit plans (Plan) for the struggling Wittek to use as operating capital. They did so after being advised by attorney Drake Boutwell that the Employee Retirement Income Security Act of 1974 (ERISA) prohibited the transfer of Plan funds to Wittek. At all relevant times, Respondent was a partner at the law firm of McBride, Baker & Coles (McBride).

Respondent and Viana formed a shell corporation, Pineville Real Estate Operating Corporation (PREOC), through which funds flowed from the Plan to Wittek, and used fraudulent means to induce the Plan administrator, Manufacturer's Bank, to transfer approximately $989,000 in Plan funds to PREOC's checking account and to McBride's client trust account. Respondent used most of the Plan funds to purchase certificates of deposit in PREOC's name, which he used as collateral for $660,000 in loans from Harris Bank Glencoe-Northbrook to PREOC. All of the loan proceeds ended up in Wittek's accounts.

Respondent prepared a note from PREOC to the Plan in the amount of $600,000.

Eventually, PREOC defaulted on the Harris Bank loans and the loan from the Plan. Harris Bank collected the certificates of deposit, Wittek became insolvent, and Viana fled the country for Brazil. The Pension Benefit Guarantee Corporation had to take over as trustee for the Plan so that the Plan members could recoup the pension funds due to them.

A jury found Respondent guilty of three counts of wire fraud, one count of theft from an employee benefit plan, and three counts of money laundering. He received concurrent sentences of 84 months in prison on the wire fraud and money laundering counts, and a 60 month concurrent sentence on the theft count. The court ordered him to pay $735,566 in restitution to the Pension Benefit Guarantee Corporation. The Seventh Circuit upheld the conviction on appeal. United States v. Hook, 195 F.3d 299 (7th Cir. 1999).

The Administrator submitted proof of Respondent's conviction and a certified copy of the Seventh Circuit's opinion. In addition, the Administrator presented the testimony of attorneys Charles Drake Boutwell and Robert Schnitz. Boutwell was a former McBride attorney who specialized in ERISA matters and consulted with Respondent and Viana regarding the Plan assets. He testified that he repeatedly told Respondent and Viana that Plan funds could not go to Wittek.

Schnitz was the managing partner at McBride at the time of the incidents that gave rise to Respondent's conviction. He testified that Respondent was not forthcoming with all of the relevant information about the Plan transactions and the PREOC mortgage transaction. As

a result of Respondent's misconduct, McBride had to pay the Pension Benefit Guarantee Corporation $200,000, $125,000 of which was paid by McBride's insurance company. Harris Bank and its insurer had to pay the remaining amount that was taken from the Plan, which totaled $600,000 or $700,000. Schnitz testified that McBride incurred between $250,000 and $300,000 in additional expenses, plus a significant amount of attorney time, due to Respondent's misconduct.

Respondent testified on his own behalf. He believes that his actions were completely proper. He testified that Viana wanted to remedy the underfunded Plan by selling Wittek's Pineville property to the Plan. According to Respondent, Boutwell assured him that the structure of the Plan transactions was "appropriate to accomplish the transfer of working capital to Wittek." In Respondent's view, the transfer of funds from the Plan to Wittek had tax consequences, but was not prohibited. He further testified that he wanted to remove the Plan funds from Manufacturer's Bank because he and Viana believed that the Bank had "annuitized" a portion of the Plan funds without Viana's authorization.

Respondent presented ten character witnesses. Four of the witnesses were businessmen and friends of Respondent's. The remaining witnesses were attorneys, one of whom was Respondent's ex-wife. All of the witnesses testified that Respondent had a very good reputation for honesty, and that his conviction did not change their opinion of him.

ANALYSIS

Respondent argues that the Hearing Board failed to consider his "actual conduct" and instead focused solely on

his conviction. As the Hearing Board noted, because an attorney is disciplined for his conduct, not for his conviction, it is appropriate for the Hearing Board to consider evidence pertaining to the acts that led to the conviction and the surrounding circumstances. See In re Ciardelli, 118 Ill.2d 233, 239-40, 514 N.E.2d 1006, 113 Ill.Dec. 94 (1987). Respondent concedes that the Hearing Board "received all of [his] relevant conduct, either through motion practice or trial testimony." Resp. Brief at 34. The Hearing Board specifically states in its Report and Recommendation that it considered the evidence Respondent submitted regarding his conduct, but did not find it persuasive. Hearing Board Report and Recommendation at 35-36. The Hearing Board found that Respondent's claim of innocence "'strains credulity' and ?is preposterous' in light of the evidence before us." Hearing Board Report and Recommendation at 35. Thus, while the Hearing Board did not accept Respondent's version of events, it certainly considered all of the evidence pertaining to his actual conduct.

In assessing Respondent's conduct, the Hearing Board justifiably relied on the conclusive evidence of Respondent's guilt on the wire fraud, theft, and money laundering
charges. It was required to do so pursuant to Rule 761(f) and a long line of supreme court cases holding that a conviction for a crime involving moral turpitude is conclusive of the attorney's guilt of the crime. See Ciardelli, 118 Ill.2d at 239; In re Callas, 82 Ill.2d 6, 14, 411 N.E.2d 271, 277 (1980). There is no question that Respondent's crimes involved moral turpitude, which is defined as fraudulent conduct or conduct "done knowingly contrary to justice, honesty, or good morals." In re Vavrik,

117 Ill.2d 408, 412-13, 512 N.E.2d 1226, 1228 (1987).

Respondent spends much of his argument contending that his conviction was unjust and improper. He asserts that "technically" he is not asking this Board to go behind the record of conviction, but is requesting instead that we decline to give the conviction the conclusive effect prescribed by Rule 761(f). He has not presented any persuasive reason to do so.

We are aware of only one case in which the Review Board determined that it was not appropriate for the Administrator to rely on the conclusive presumption in Rule 761(f). In In re Cueto, No. 97 SH 100 (Review Board, Aug. 31, 2001) the respondent raised the issue of the Administrator's involvement in the criminal proceedings that led to his conviction. The Review Board remanded the matter to allow the respondent to raise the Administrator's involvement as a circumstance of his conviction. Following remand, the Hearing Board and Review Board recommended that Cueto be disbarred and the supreme court agreed with those recommendations. Cueto, No. SH 100 (Review Board, July 19, 2004), petition for leave to file exceptions denied, No. M.R. 19679 (Nov. 17, 2004).

Respondent's case is nothing like Cueto. While Respondent contends that his criminal conviction was unfair, his remedy for any perceived errors lay with the federal courts. Respondent may not relitigate his conviction in this venue.

Next, we address Respondent's novel argument that the Hearing Board should not have given his conviction conclusive effect because it did not follow the supreme court's ruling in American Family Mutual Ins. Co. v. Savickas, 193 Ill.2d 378, 739 N.E.2d 445, 250 Ill.Dec. 682 (2000).

In Savickas, the insurance company of a convicted murderer sought a declaratory judgment that it was not required to defend Savickas in a lawsuit filed by his victim's estate. In holding that it was proper to give estoppel effect to Savickas's criminal conviction, the supreme court set forth the following requirements that must be met before a criminal conviction may be given estoppel effect in subsequent civil litigation: (1) the issue decided in the prior litigation must be identical to the issue in the subsequent litigation; (2) there must have been a final judgment on the merits in the prior litigation; (3) the party sought to be estopped must be the same party or in privity with a party from the prior litigation; (4) the party sought to be estopped must have litigated the relevant issue in the prior litigation, (5) the issue must have been necessary to the judgment in the prior litigation, and (6) it must be clear that no unfairness will result to the party sought to be estopped. Savickas, 193 Ill.2d at 388, 739 N.E. 2d 445, 250 Ill.Dec. 682.

The court noted in Savickas that it has long been the rule in this state that criminal convictions constitute "conclusive evidence of guilt" in attorney disciplinary proceedings. Savickas, 193 Ill.2d at 386, 739 N.E. 2d 445, 250 Ill.Dec. 682; citing In re Scott, 98 Ill.2d 9, 16, 74 Ill.Dec. 51, 455 N.E.2d 81 (1983). The court did not hold that the requirements set forth in Savickas must be applied in disciplinary proceedings, nor has it amended Rule 761(f) to so require. For these reasons, we conclude that Savickas is not controlling in disciplinary proceedings.

Moreover, we agree with the Administrator that the Savickas requirements are subsumed in the operation of Rule 761(f), so there is no need to go through them in every case brought under Rule 761. Rule 761 applies when an

attorney has been convicted of a felony or a misdemeanor (Rule 761(a)). When the crime involves fraud or moral turpitude, the Hearing Board shall conduct a hearing to determine whether the crime warrants discipline (Rule 761(d)). Rule 761(f), the section in question, provides that proof of conviction is conclusive of the attorney's guilt of the crime. Thus, the issue addressed by Rule 761(f) will be identical to the issue presented in the criminal case?whether the attorney was guilty of the charged offenses. Second, the requirement of a final judgment in the criminal case is satisfied because Rule 761(d)(2) provides that an attorney's hearing shall be delayed until the appellate process is finished, unless the attorney requests otherwise. Third, the attorney will always be the defendant in the criminal proceeding. Fourth, the attorney will have either litigated the issue of his innocence or waived that right in cases where the attorney pleaded guilty. Fifth, the issue of whether the attorney committed the charged offenses was necessary to the judgment.

Finally, Rule 761(f) satisfies the requirement of no unfairness. The beyond a reasonable doubt burden of proof in a criminal trial is greater than the clear and convincing burden of proof in the disciplinary proceeding. Therefore, the attorney received maximum evidentiary safeguards in the criminal trial. Rule 761(f) does not provide that proof of conviction is conclusive as to whether discipline is warranted and, if so, the nature thereof. Those decisions are ultimately made by the supreme court after considering all of the relevant circumstances. The fact that attorneys who are convicted of crimes, especially those whose crimes involved moral turpitude, regularly receive significant discipline is both expected and justified, in light of our disciplinary system's primary purposes of protecting the

public and maintaining the integrity of the legal profession.

Accordingly, we cannot agree with Respondent that the Hearing Board was required to apply the Savickas factors or that those factors, if applied, would have precluded the application of Rule 761(f). Consequently, we conclude that Rule 761(f) as applied is consistent with Savickas and does not violate his constitutional rights.

Respondent's final argument is that disbarment is not an appropriate sanction in this matter. The purpose of the disciplinary process is "to protect the public, to maintain the integrity of the profession and to protect the administration of justice from reproach." In re Fox, 122 Ill.2d 402, 410, 522 N.E.2d 1229, 119 Ill.Dec. 370 (1988). The Hearing Board's sanction recommendation is advisory. In re Hopper 85 Ill.2d 318, 323, 423 N.E.2d 900, 53 Ill. Dec. 231 (1981). When making our sanction recommendation, we consider the facts and circumstances of this particular case, the sanctions imposed in cases involving similar misconduct, the purposes of the disciplinary system, and the sanction's potential deterrent value. In re Rice, No. 95 CH 210 (Review Board, Dec. 16, 1996) at 11-12, approved and confirmed, No. M.R. 13391 (March 21, 1997).

In his reply brief, Respondent argues that suspension, rather than disbarment, is the more typical sanction in cases involving fraudulent schemes. Because Respondent failed to raise this argument in his initial brief he has waived it, pursuant to ARDC Rule 302 (f)(5). See In re Smith, No. 92 CH 296 (Review Board, September 1, 1994) at 13, 168 Ill.2d 269, 659 N.E.2d 896, 213 Ill.Dec. 550 (1995).

Respondent was convicted of crimes involving moral turpitude. His egregious misconduct involved a

series of deliberate acts over a period of several months. He put the Plan
members' pension funds in jeopardy and caused significant financial harm to his former law firm, Harris Bank, and their insurers. This type of misconduct has warranted disbarment in other cases, and also warrants disbarment in this case.

We agree with the Hearing Board that In re Fumo, 52 Ill.2d 307, 288 N.E.2d 9 (1972), and In re Minneman, No. 98 SH 38 (Review Board, Nov. 29, 2000), petition for leave to file exceptions denied, No. M.R. 17352 (March 22, 2001) support disbarment. The attorney in Fumo defrauded insurance companies and his clients and was convicted of mail fraud. The attorney in Minneman was convicted of conspiracy to commit tax fraud. Despite favorable character evidence, the supreme court disbarred both of these attorneys because they deliberately engaged in a series of fraudulent acts over a period of time. The same is true of Respondent.

The Administrator cites In re Hutul, 54 Ill.2d 209, 296 N.E.2d 332 (1973) (attorney convicted of mail fraud and conspiracy); In re Pappas, 92 Ill.2d 243, 442 N.E.2d 142 (1982) (attorney convicted of mail fraud, conspiracy to commit mail fraud, and causing an individual to travel in interstate commerce with the intent to commit bribery); and In re Vavrik, 117 Ill.2d 408, 512 N.E.2d 1226 (1987) (attorney convicted of embezzling). These cases support our recommended sanction of disbarment as well.

We have considered the evidence Respondent offered in mitigation and the fact that he has no prior discipline. Like the Hearing Board, we conclude that the mitigating evidence does not persuade us that anything less than disbarment is warranted. The Hearing Board found

that Respondent was guilty of the criminal charges against him, despite his extensive efforts to show that he was actually acting in the best interests of all the parties involved. Respondent's character evidence, while favorable, cannot overcome his refusal to acknowledge and accept responsibility for his misconduct.

Respondent challenges the Hearing Board's consideration of his lack of remorse as an aggravating factor. The supreme court has consistently considered an attorney's remorse, or lack thereof, when considering whether he or she is fit to practice law. See In re Rinella, 175 Ill.2d 504, 518, 677 N.E.2d 909 (1997); In re Lewis, 138 Ill.2d 310, 348, 562 N.E.2d 198 (1990). In In re Wigoda, 77 Ill.2d 154, 160-61, 395 N.E.2d 571 (1979), the supreme court discussed whether an attorney's continued assertion of innocence can, by itself, bar his reinstatement. The court held that it could not. Thus, under Wigoda, a respondent has the right to maintain that he is innocent. However, neither the Hearing Board nor this Board is required to accept Respondent's protestations of innocence, nor must we ignore his lack of remorse when considering our sanction recommendation. We find Respondent's lack of remorse and failure to acknowledge any wrongdoing particularly disturbing and indicative of an inability to comprehend his ethical duties. We further note that Respondent has paid only $200 per month toward the $735,000 restitution amount ordered by the federal court.

Having considered all of the circumstances of this case, including the nature of Respondent's misconduct and the factors in aggravation and mitigation, we conclude that a recommendation of disbarment is necessary to protect the public and maintain the integrity of the legal profession. We further recommend that Respondent be required to

continue paying restitution toward the balance of the amount he owes pursuant to his sentencing order.

Date Entered: May 16, 2006
Respectfully submitted:
Cheryl I. Niro
Terence V. O'Leary
Thomas A. Zimmerman, Jr.

Filed July 26, 2005
In re George Clive Hook
Commission No. 98 CH 50
Synopsis of Hearing Board Report and Recommendation
NATURE OF THE CASE: committing criminal acts that reflect adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; conduct involving dishonesty, fraud, deceit or misrepresentation; and conduct that is prejudicial to the administration of justice, or which tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute
RULES DISCUSSED: 8.4(a)(3) of the Illinois Rules of Professional Conduct (1990); 8.4(a)(4); 8.4(a)(5) and Supreme Court 771
SANCTION: Disbarment
DATE OF OPINION: July 26, 2005
HEARING PANEL: Joseph A. Barthlomew, William E. Hornsby, Jr. and Albert C. Baldermann
ADMINISTRATOR'S COUNSEL: Athena T. Taite
RESPONDENT'S COUNSEL: Pro se

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:
GEORGE CLIVE HOOK,
Attorney-Respondent,
No. 1256432. Commission No. 98 CH 50

REPORT AND RECOMMENDATION OF THE HEARING BOARD

The hearing in this matter and was held on February 2-3, March 16 and April 19, 2005 at the offices of the Attorney Registration and Disciplinary Commission, Chicago, Illinois, before a Panel of the Hearing Board consisting of Joseph A. Bartholomew, Chair, William E. Hornsby, Jr. and Albert C. Baldermann. Athena T. Taite appeared on behalf of the Administrator and Respondent, George Clive Hook,
appeared pro se.

PLEADINGS AND PRE-HEARING RECORD

In a one-count Complaint filed pursuant to Supreme Court Rule 761(d) on June 11, 1998, the Administrator alleges that due to Respondent's May 29, 1997 conviction in the U.S. District Court, Central Division of Illinois in United States of America v. George C. Hook, No. 1L95CR10010-002, Respondent has engaged in the following misconduct: committing criminal acts that reflect adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; conduct involving dishonesty, fraud, deceit or misrepresentation; and conduct that is prejudicial to the administration of justice, or which tends to defeat the administration of justice or to bring the courts or the legal profession
into disrepute. (See Adm. Compl. at para. 1-7; Adm. Ex. 1)

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On November 19, 1999 the Illinois Supreme Court, pursuant to the rule to show cause under Supreme Court Rule 761 that issued to Respondent on June 17, 1998 and continued until August 11, 1998, ordered Respondent suspended from the practice of law effective immediately and until further order of Court. On September 5, 2000 Respondent filed his Answer to the Administrator's Complaint.

On March 30, 2001 the Administrator's Motion to Strike Respondent's Answers and Exhibits was granted and Respondent was allowed to file an Amended Answer to the Administrator's Complaint in compliance with Commission Rule 233 on or before April 16, 2001. On April 20, 2001 Respondent filed his Answer and Verified Third Party Complaints. On April 26, 2001 the Administrator filed a Motion to Strike Respondent's Third Party Complaints. On May 15, 2001 Respondent filed a Response to the Administrator's Motion to Strike his Third Party Complaints. On June 4, 2001 the Chair granted the Administrator's Motion to Strike Respondent's Third Party Complaints and ordered that pages 26-40 of Respondent's April 20, 2001 Amended Answer be stricken. Respondent's Answer denies virtually all of the allegations of the Administrator's Complaint.

On May 17, 2002 Respondent filed a Motion in Limine to preclude use of his federal conviction. On May 29, 2002 the Administrator filed a response to Respondent's Motion in Limine. On June 18, 2002 the Administrator filed a Motion in Limine to preclude argument and evidence contradicting Court rulings regarding PBGC v. Wittek and its relationship to U.S. v. Hook, a Motion in Limine to preclude argument and evidence concerning whether Respondent received a full and fair hearing, and a Motion to Strike certain affirmative defenses. On July 31, 2002 Respondent filed his response to both of the Administrator's Motions in Limine, a response to the Administrator's Motion to Strike and a reply in support of his Motion in Limine to preclude use of his federal conviction. On September 10, 2002 the Chair denied Respondent's

Motion in Limine to preclude use of his federal conviction and granted the Administrator's Motion in Limine to preclude argument and evidence contracting court rulings regarding PBGC v. Wittek and its relationship to U.S. v. Hook as well as the Administrator's Motion in Limine to preclude argument and evidence concerning whether Respondent received a full and fair hearing. The Chair further deemed the Administrator's Motion to Strike certain affirmative defenses moot based on the ruling on other motions.

Based on the reassignment of this matter to another Hearing Board Chair, on March 20, 2003, Respondent filed a Motion to Reconsider preclusion of his federal conviction and a Motion to Reinstate Third Party Complaints. Four days later, the Administrator filed responses to Respondent's Motion to Reinstate Third Party Complaints and the Motion to Reconsider. On March 25, 2003 Respondent filed a Motion to Reconsider Motion to Compel pursuant to Supreme Court Rule 219. On April 3, 2003 the Administrator filed her response to Respondent's Motion to Reconsider Motion to Compel and her responses to Respondent's Motion to Reconsider preclusion of argument and evidence regarding PBGC v. Wittek and Motion to Reconsider permitting argument and evidence that U.S. v. Hook was not a full and fair hearing. On April 15, 2003, Respondent filed a reply in support of the Motion to Reconsider preclusion of federal conviction.

Additionally, On May 19, 2003 the Chair ordered that a hearing in this matter was tentatively scheduled for July 29 and 30, 2003. The tentative hearing was to be held, pending confirmation, at the Metropolitan Correctional Center where Respondent was incarcerated. On July 16, 2003 Respondent filed an In Chambers Motion to Place Motions

Under Seal and a Motion to Postpone Proceedings. On July 22, 2003 the Chair ordered, with no objection by the
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Administrator, that Respondent's Motion to Postpone Proceedings be granted and thereby vacated the previously scheduled July 29 and 30, 2003 hearing dates. On August 17, 2004 the Chair denied Respondent's Motion to Reinstate Third Party Complaints and his Motion to Reconsider Preclusion of Federal Conviction. On August 23, 2004 Respondent sent the Chair, a letter requesting reconsideration
of the August 17, 2004 order which denied his Motion to Reinstate Third Party Complaints. On September 1, 2004 the Chair denied Respondent's Motion to Reconsider the Denial of his Motion to Reinstate Third Party Complaints and the Motion to Reconsider Denial of his Motion to Reconsider Preclusion of Federal Conviction. On September 30, 2004 the Chair scheduled the hearing for December 2 and 3, 2004
at the Chicago offices of the ARDC. On November 11, 2004 the Chair ordered that the Administrator and Respondent file any motions in limine or motions to bar or exclude testimony on or before November 12, 2004. The Chair further ordered that the Administrator and Respondent shall respond to any motions in limine or motions to bar or exclude testimony on or before November 23, 2004 and that the hearing remain scheduled for December 2 and 3, 2004.
On November 12, 2004 the Administrator filed a Motion to Limit Character Witnesses and Motion in Limine to Bar Witness Testimony. On November 23, 2004 Respondent filed responses to the Administrator's Motions. On November 30, 2004 the Administrator's Motion in Limine

to Bar Witness Testimony was granted, but the Administrator's Motion to Limit Character Witnesses was denied.

EVIDENCE

The Administrator presented the testimony of Robert Schnitz, Drake Boutwell and Exhibits 1-3 which are, respectively, the certified judgment and opinion in United States of

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America v. George C. Hook, No. 1L95CR10010-002, and the July 13, 1992 letter from Drake Boutwell to Carmen Viana. Respondent presented his own testimony along with the testimony of Richard Baran, Robert Neil Rudman, Theodore W. Grippo, Joseph Pankus, Carol Petersen, Glen Canwitt, Michael C. Osajda, Albert L. Grasso, Nicolas C. Hindman and Exhibits 4, 17, 21, 22, 24, 24-B, 25, 26-7-A, 26-9-A, 26-B, 27, 28, 28-A, 29, 32, 34, 37, 40, 45, 46, 46-A, 53, 55, 56-A, 56, 57, 58, 59, 59-A, 59-B, 59-C, 59-D, 60, 61, 61-A, 63, 63-B, 64, 66, and 67. The testimony of the witnesses and the Exhibits established the following facts:

On September 13, 1996, a federal grand jury returned a seven-count indictment alleging that beginning in June of 1992 and continuing to, at least September of 1992, Respondent conspired with Carmen Viana "Viana") to commit wire fraud, money laundering and theft. The indictment alleged that Viana was the sole owner, Chairman and CEO of Wittek Industries, Inc. ("Wittek"). Wittek was the employer and plan sponsor for an employee benefit plan ("Plan"). The Plan was an employee benefit plan subject to the provisions of Title 1 of the Employee Retirement Income Security Act of 1974 ("ERISA). Certain provisions of ERISA

prohibited the lending or transfer of Plan funds to or for the benefit or a party in interest, such as an employer (Wittek). The assets and funds of the Plan were held and managed by Manufacturer's Bank in Detroit, Michigan. The indictment further alleged that Respondent conspired with Viana to form a "shell" corporation to serve as a conduit for money to flow from the Plan to Wittek. The purpose of the conspiracy was to obtain funds to provide additional operating capital to Wittek. Between July 17, 1992 and August 7, 1992, Respondent conspired with Viana to transmit and receive by wire transfer, approximately $989,000 belonging to the Plan, and that Respondent placed those funds in a "shell" corporation account and a client trust account for the purpose of concealing the source of these funds. The indictment also alleged that between August 6, 1992,

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and September 18, 1992, Respondent laundered $660,000 belonging to the Plan with the intent of concealing the nature, location, source, ownership and control of the funds. Respondent was also charged with willfully converting $36,800 of the funds from the Plan. (See Adm. Compl. para. 1-5; Adm. Ex. 2 at pp. 3-6)). On May 29, 1997 Respondent was found guilty of each charge set forth in the indictment, (three counts of wire fraud, 18 U.S.C. § 1343, one count of theft from an employee benefit plan, 18 U.S.C. § 664, and three counts of money laundering, 18 U.S.C. § 1956) and on May 27, 1998 Respondent was sentenced to eighty-four months imprisonment and ordered to pay restitution in the amount of $735,566.00. (See Adm. Compl. para. 6-7; Adm. Ex. 1; Adm. Ex. 2 at pp. 7-8). Testimony of Respondent

Respondent testified that Viana described to him a very simple transaction involving Wittek's Plan which involved Wittek's three properties and how she wanted to sell one of those properties to the Plan. Respondent advised Viana that he did not regard himself as an expert in pension law, but knew such a transaction required an ERISA lawyer because it might be a prohibited transaction. Respondent knew enough about pension law to know an ERISA expert was required, but that was the extent of his knowledge. In a meeting between Viana and Boutwell, Viana described the transaction she wanted Boutwell to complete. Boutwell informed Viana that such a transaction was prohibited, but he thought the transaction could be structured in a way to accomplish Viana's goals which was to cure the under-funding of the Plan which was approximately $800,000.00. The transaction, if accomplished, would also provide working capital to Wittek. (Tr. 290-300).

Boutwell testified against Respondent in his criminal trial. Respondent does not know if Boutwell received immunity from the prosecution for his testimony. Boutwell's testimony in the

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criminal proceeding was that it was untrue that the Pineville Real Estate Operation Corporation assets were not Plan assets. (Tr. 301)

Respondent testified that the money (a little less than $700,000.00) went to Wittek in the form of a loan from Pineville Real Estate Operation Corporation. Those funds were used to operate Wittek. Viana was not taking her full salary during this time period. (Tr. 341). According to Respondent, Viana did not flee the country after her indictment; instead she tried to resuscitate the company until the middle of 1994 when she realized she could not do

that. Viana put herself and Wittek into bankruptcy and then she went to Brazil expecting to come back for the federal hearings. Viana had periodic medical problems. Viana was indicted in February of 1995 and was Respondent's co-defendant. The government attempted to extradite her from Brazil and trick her to come back, but that did not work. The government was also planning on indicting Viana for tax evasion dating back to a period of time long before Respondent ever knew her. Viana was a New York resident and citizen of Brazil. (Tr. 341-344).

Respondent testified that he was not counsel for the Plan although the plan's money went from Manufacturer's Bank to his firm's trust account even though the Plan was not his client, since his clients were Pineville and Wittek. Respondent never expected those funds to go to his firm's trust account. According to Respondent the firm's trust account was used an an accommodation account. Respondent agreed he wired the funds to Wittek which used the funds for operating expenses. (Tr. 370-371). Respondent did not wire the funds back to the bank and wait to get another account in a few days and have the funds sent to the appropriate bank.

Respondent viewed his responsibility to Viana, not to the bank which had no further relationship with the Plan, even though Respondent agreed he did not represent Viana. Respondent thought he did not have the authority

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to direct the funds unless he asked the trustee of the Plan what to do and Viana told him to send the funds to Wittek's COBRA account. Respondent initially thought he was sending the funds to a trust account Wittek's comptroller, Mr. Lumen, had established. Respondent admitted that sending of the funds to Wittek's COBRA account without

documentation can be interpreted as giving the appearance of impropriety. Respondent again stated he did not feel comfortable with doing anything with the funds without conferring with the trustee, Viana. Respondent believes what he did was proper, and he does not view it as a mistake. (Tr. 373-379, 382).

Respondent further testified that Viana was upset that annuities were purchased with money from the Plan without her authorization because she was the one who was ultimately responsible for the pension and profit sharing plans. (Tr. 485-521).

Respondent stated that the prosecution's theory in his criminal case was that he assisted Viana to steal money from Wittek's pension funds. Respondent testified that his main objective was to secure the Plan from these unauthorized activities. Respondent thought it was important to get the funds out of the hands of Manufacturer's Bank. Respondent wanted to avoid litigation with Manufacturer's Bank and he was happy when the attorney, Mr. Buschmann, became involved because Respondent thought Buschmann would establish the requirements Manufacturer's Bank needed in order to transfer funds. Respondent thought Wittek would be able to satisfy those requirements and therefore the Plan would not end up in litigation. During this time period there were already numerous law suits going on involving Wittek. (Tr. 523, 535-536).

Respondent stated that around June 9 or 10, 1992 Viana and Boutwell discussed the transaction that Viana wanted to implement in which Wittek would sell one of three pieces of property to the Plan. Boutwell indicated that would be a prohibited transaction and he proposed

an alternate structure to accomplish Viana's goal of curing the under funding of the Plan which would also provide working capital for Wittek. The premise of Boutwell's structure was Department of Labor/IRS Regulation 2510.3-101. Boutwell stated that as long as the Plan did not have more than a 51% interest in the underlying company (Wittek), the assets of that company would not be Plan assets and the underlying assets would not be subject to ERISA regulations. Boutwell's structure was the whole premise of the transaction which would provide working capital to Wittek. Under the transaction, 51% of Pineville's shares would be owned by the Plan and 49% would be owned by Viana. Respondent prepared the subscription agreements which were executed by Viana as trustee of the Plan and by Viana individually; however, the stock was never issued. Boutwell acceded to Bushmann's concerns and recommended that the Plan own 100%, which Respondent thought was contrary to the regulations and would have meant that Wittek could not have transferred the property to Pineville Real Estate Operation Corporation because it could not transfer it to an entity which was 100% owned by the Plan. (Resp. Exs. 4, 24; Tr. 539-542, 551-553).

Respondent believed the structured transaction would cure the under funding of the Plan and provide working capital for Wittek. According to Respondent, the whole question was how could this be done, legally. Respondent did not know the answer to this question and consulted an ERISA expert since Respondent could not make that determination. (Tr. 554, 569-570, 727).

Respondent also testified that he caused the incorporation of the Pineville Real Estate Operation Corporation in North Carolina. Respondent prepared the documentation which he

had Boutwell review and comment on. Boutwell advised that a deed in trust to reflect the security interest between Wittek and Pineville not be filed in order to assure that the Plan would not be subject to any subordination of a purchase money mortgage. Boutwell's advice was reflected in

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the documents. When Respondent was terminated as Wittek's counsel in 1994 the documents he had involving Wittek and Pineville were taken by Viana from him and all of the documents presented at this hearing are documents the federal government obtained in its criminal discovery process. (Tr. 698).

Respondent further testified that the Plan was not his client, but Pineville Real Estate Operating Corporation and Wittek were his clients, and it was appropriate for him to confer with Viana and receive direction from her. Even if these entities were not his clients Respondent would have sought the advice of the person whose funds they were and that is exactly what he did. (Tr. 701).

Respondent stated that Viana would have benefited from the Pineville transaction since she would have been a 49% shareholder in Pineville. If the Pineville property had been sold Viana would have received 49% of the proceeds and Wittek would have received the loan from the Plan as well as $1.5 million in payments. The transaction was intended to be a good deal for everyone. (Tr. 732, 738-739).

Respondent also stated that Viana could have cured the under funding of the Plan with the proceeds from the sale of the LaGrange property or the Pineville Property. Respondent testified that, various adjustments had been made by the actuary, there actually would have been no

under-funding of the Plan. (Resp. Ex. 64; Tr. 743-744, 748).

Respondent further testified that the structuring of the equity in Pineville was done because the pension plan could not have all of the equity interest and if Viana had more than a 50% interest under the interested/disqualified person provision, would be regarded as receiving those plan assets, and that would adversely affect Boutwell's structuring therefore, a 51%/49% arrangement was necessary to comply with the law. According to Respondent, Boutwell acknowledged in his July 13th letter that Viana was a fiduciary under the Pineville structuring, PAGE 11:

but was not personally receiving anything from the Plan that would have made it a prohibited transaction. The only source of revenue that she would receive from Pineville was as a shareholder which, according to Respondent, was not a prohibited transaction since there was no transfer of Plan Assets from the pension plan to Wittek. (Adm. Ex. 3; Tr. 786-787, 790-791).

On cross-examination Respondent admitted that in 1992 Wittek was strapped for cash and therefore he tried to obtain financing for Wittek, but could only obtain financing from the Pineville Real Estate Operation transaction and from one of John Darrah's companies. Part of the financing for Wittek was with respect to the Pineville transactions. (Tr. 806).

Respondent agreed on cross-examination that Boutwell consistently gave advice that Wittek could not receive Plan assets. Respondent agreed that the language in Respondent's Exhibit 59 specifically discusses the loan proceeds. Respondent stated that they were to use the Plan's

money as working capital which was a very broad term. (Resp. Ex. 59; Tr. 807-810).

Respondent agreed he was convicted of money laundering and stated he was also convicted of unlawful conversion of pension plan assets to the use of another and wire fraud for misrepresentations occurring in the July 15, 1992 and July 30, 1992 communications to the Bank of Detroit.

Respondent stated he was ordered to pay restitution in the amount of $735,000. Respondent is unable to pay the full amount of restitution and is currently paying $200 per month which is the maximum amount that he can afford to pay in his present circumstances. (Tr. 811-813).

Testimony of Drake Boutwell

Drake Boutwell ("Boutwell") is an attorney licensed to practice in Illinois since approximately 1975 or 1976. Boutwell graduated from the University of Alabama Law School

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and he received his master's in tax from New York University. Boutwell also has a background in accounting. (Tr. 586-587).

Boutwell testified that in 1992 he practiced law and his concentration was in the ERISA. Boutwell preformed legal services for Wittek and he knew Respondent and Viana at that time. Boutwell testified that Administrator's Exhibit 3 is the advisory letter regarding a proposed transaction he sent to Viana on or about July 13, 1992 which was also copied to Respondent. Boutwell agreed that the letter indicated that Pineville was to use Plan assets to develop the real estate. Under this letter, it states that only Pineville could use Plan assets, therefore, Plan assets could not be used for Wittek's working capital or operating expenses. Boutwell also testified that the letter was done only with

respect to the legality of the transaction and it was not advice regarding the prudence or advisability of a particular investment. The advice in the letter was regarding whether this would, or would not be a prohibited transaction. (Adm. Ex. 3; Tr. 588-590, 594-595).

Boutwell further testified that around the time of the July 13, 1992 letter, he had conversations with Respondent indicating that Plan assets could not be used as operating expenses, working capital, or by Wittek in any fashion. (Adm. Ex. 3; Tr. 591-592).

On cross-examination Boutwell indicated he regards himself experienced in ERISA at this time, but it is a very broad area and as far as the statute in the letter, he hasn't looked at statutes like that for 10 years. Therefore, Boutwell does not regard himself as an ERISA expert in the same way he did in 1992. (Adm. Ex. 3; Tr. 599). Boutwell recalled that the July 13, 1992 letter had an error in it. Boutwell could not recall the specific error in the letter, only that in his own mind he misread a complicated regulation. Boutwell recalled making an error regarding the reading of some language in the

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regulation. Boutwell further testified that he consistently told Respondent and Viana that the Plan's money could not go to Wittek. Boutwell testified in Respondent's criminal case but was not granted immunity. (Adm. Ex. 3; Tr. 633-635, Tr. 641, Tr. 644). Boutwell stated that he was the only one out of Respondent, Viana and himself who knew anything about real estate operating corporations and the Department of Labor's pension regulations. (Tr. 645).

EVIDENCE OFFERED IN MITIGATION

Testimony of Richard Baran

Richard Baran ("Baran") testified that he recently retired from being a teacher and a coach for the last forty years. Baran graduated from the Missouri Military Academy ("the Academy") and he has bachelor's and master's degrees in business from Loyola University, Chicago. Baran also has a master's of science degree in counseling from Chicago State and a doctorate in education from Vanderbilt University. Besides being a teacher, Baran also worked as a business consultant in the area of stress management in the aviation industry. Currently, Baran is working on six different novels. (Tr. 109-111). Baran has known Respondent since September of 1952 when they were both freshmen at the Academy. Baran and Respondent would socialize a couple of times each year through their association with the Academy's alumni association and at homecomings. (Tr. 111-112).

Baran testified that he aware of Respondent's reputation regarding his character and when he heard what happened he was, "to put it bluntly—totally floored by all of this" since he has known Respondent so long. Baran stated that Respondent is upright and "honest as the day is long". Baran also testified that he could not ever see Respondent doing the things that he was accused of doing. Baran stated he was aware of the charges that were brought against

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Respondent and that he was found guilty of those charges by a jury and that Respondent was sentenced to seven years in prison. (Tr. 112-117).

Testimony of Robert Neil Rudman

Robert Neil Rudman ("Rudman") testified that he graduated from the Academy in 1956 and four years later graduated from Westminster College in Fulton, Missouri. After graduating from Westminster College Rudman went

into his family businesses which consisted of several enterprises. Rudman met Respondent when they were freshmen at the Academy and he has known Respondent since that time.

Rudman and Respondent were roommates during their junior and senior years at the Academy. After graduating from the Academy, Rudman and Respondent kept in touch. Rudman also testified that Respondent was a trustee of the Academy. Respondent attended Rudman's daughter's wedding and his 60th birthday party. Rudman and Respondent got together whenever they could. (Tr. 119-124).

Rudman further testified that the consensus about Respondent's character amongst his peers is that it would be inconceivable that Respondent would be guilty of whatever he was sentenced for because that is not Respondent's nature. Rudman stated he "had no reason not to say you were guilty or innocent to me because it made no difference, really in our friendship. And it's my belief that you aren't guilty." Rudman also stated he has the highest regard for Respondent and that hasn't changed because of his misfortunes. If Rudman had to characterize Respondent in one word it would be "integrity". (Tr. 125-127).

Rudman was aware of the federal charges against Respondent, that he was found guilty of those charges and that he was sentenced to seven years in prison. Rudman's opinion of Respondent has not changed because of Respondent's indictment, conviction or incarceration.

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Rudman testified that he wrote letters to President Bush and to Attorney General Ashcroft on behalf of Respondent. (Tr. 124-125). (Tr. 127-128).

Testimony of Theodore W. Grippo

Theodore W. Grippo ("Grippo") testified that he is a partner with the law firm Grippo & Elden located in Chicago. Grippo received a bachelor in science from Georgetown University and his law degree from Northwestern University. Grippo also received an LLM degree in taxation from DePaul University. Grippo was the Securities Commissioner for the State of Illinois in 1959 and he practiced law with the law firm Keck, Mahin & Kate, Rubin & Proctor which merged into the law firm Isham, Lincoln & Beale. This firm eventually dissolved. Grippo then formed the law firm of Grippo & Elden. Grippo has known Respondent since approximately 1975 when they both lived at 2650 Lakeview in Chicago. (Tr. 131-135, 141). Grippo testified that in 1992 he was involved with Wittek. Grippo's involvement with Wittek began because Sidley & Austin was representing Wittek and they had experienced some sort of conflict which caused that firm to withdraw from its representation of Wittek. Upon Sidley & Austin's withdrawal, Wittek retained Grippo & Elden as legal counsel. Grippo handled the Wittek matter since it was more of a corporate matter than a litigation matter even though it involved litigation. It appeared that there was an attempt to take over Wittek by a group of internal officers. The president of the company, Viana, had acquired this company while Sidley & Austin was representing Wittek. Viana moved Wittek from the Chicago area to Galesburg, Illinois. Grippo went to court to seek a temporary restraining order ("TRO") so that the internal employees of Wittek could not take over the company. The Circuit Court issued the TRO. The opponents filed a motion for sanctions against Grippo & Elden alleging that the complaint was not justified.

Eventually, over a two year period, the opponent's motion for sanctions was
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dismissed. Because of the motion of sanctions being filed against Grippo & Elden, Grippo & Elden could no longer represent Wittek and Respondent became Wittek's counsel. (Tr. 136-140).
Grippo testified that due to his association with Respondent he has formed an opinion as to Respondent's character. Grippo stated at the time of the Wittek matter, he felt Respondent had the highest quality of character. He thought Respondent was a fine lawyer and fine man. Grippo testified he is generally aware of the federal charges against Respondent, that Respondent was found guilty of those charges and that he was sentenced to seven years in prison.
Grippo wrote Respondent letters while he was in prison. Grippo also wrote a letter to President Clinton asking for Respondent's pardon and he visited Respondent while he was in prison. Grippo also stated that Respondent would be fit to practice law today since he believes Respondent would never make that mistake again. (Tr. 142-145).
Testimony of Joseph Pankus
Joseph Pankus ("Pankus") testified that he graduated with Respondent from Knox College located in Galesburg, Illinois. Pankus was in the advertising business and eventually started his own company called Holiday Publishing. Pankus sold this company and went on to a variety of other jobs and most recently retired as President of Wurlitzer where he spent the last 12 years. Pankus then joined a company called Morris Anderson. (Tr. 153-154).

Pankus has known Respondent for almost fifty years and has periodically kept in touch with Respondent since their graduation from Knox College. Respondent
contacted Pankus in 1992 to help revise a poorly structured marketing and sales program at Wittek. Pankus thought Respondent was the attorney for the company at that time. Pankus left Wittek after about four
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months since it was evident to him that, without major changes, Wittek was not going to make it. (Tr. 154-156). Pankus stated Respondent asked him to deal with Wittek's marketing and sales strategies which Pankus agreed to do. Pankus discovered that prior to his involvement some Wittek employees tried to sabotage the company with an attempted takeover, and in reviewing the growth of the company, Pankus noticed that the labor cost ratios kept getting higher and higher than the previous labor cost ratios had been at Wittek. According to Pankus, there were too many
variables at Wittek that kept increasing from the cost standpoint. Pankus informed Viana and Jim Baughman ("Baughman"), the head of Wittek's quality control, that if they continued selling the products at the same prices they would run out of money within 12 to 18 months. Pankus also showed Viana and Baughman informal data that he collected indicating that at that time Wittek's labor costs were going right through the roof. Viana and Baughman did not
respond to Pankus' information. Pankus also testified that he informed Viana and Baughman that they either had to get new equipment or make the company unique, but Wittek could not continue the same way without raising prices. (Resp. Ex. 63; Tr. 158-167).

Pankus testified that he is aware of Respondent's character and that he has never had anybody question Respondent's integrity, honesty or moral fiber. Pankus is aware of the federal charges against Respondent, that Respondent was convicted of those charges and that he was sentenced to seven years in prison. Pankus stated Respondent's criminal conviction has not changed his opinion about Respondent. (Tr. 172-175).

Testimony of Carol Petersen

Carol Petersen ("Petersen") testified that she graduated from the University of Illinois, she received her master's and juris doctor degrees from Stanford and she received a master's in

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tax from IIT Kent. In 1966 Petersen joined the law firm Schiff, Hardin Waite, Dorshell & Britton as an associate and became a partner in 1973. Petersen left that firm in 1979 and went to Hubachek, Kelly, Brown & Kirby. In 1990 Petersen went to the First National Bank of Chicago as a trust advisor for their client services area. (Tr. 177-178).

Petersen first met Respondent when he interviewed for an associate position with Schiff, Hardin, Waite, Dorshell & Britton. In October of 1966, Respondent became an associate at this firm upon his return from the service. Petersen and Respondent started dating each other when they were both associates at Schiff, Hardin, Waite, Dorshell & Britton and were married in 1968. Petersen and Respondent have two children together and they were divorced in 1992. Respondent is currently staying at Petersen's home since he was released from prison in the spring of 2004. (Tr. 178-179).

Petersen testified that as a result of their association she is aware of Respondent's character. According to Petersen Respondent is, "scrupulously honest.and that you try to do the very best under the circumstances."
Petersen is aware of the federal charges for which Respondent was found guilty and that he was sentenced to seven years in prison. She visited Respondent while he was incarcerated. Her knowledge of Respondent's conviction has not altered her opinion of Respondent. (Tr. 180-181).
Petersen stated that during the time frame when Respondent was trying to get Harris Bank to be the Plan's trustee, Respondent did not seek Petersen's counsel about how he should handle the trustee issue. Petersen further testified Respondent did not speak with her about any of the Wittek matters. Petersen testified that the Wittek situation really not did have anything to do with her divorce from Respondent. (Tr. 213-215).
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Petersen further testified that Respondent was involved in a very, very difficult situation when he was representing Wittek and she was shocked and surprised that Respondent was criminally prosecuted. Petersen further testified that she did not believe Respondent lacked objectivity regarding his client in this matter, but that Respondent tends to zealously represent his clients and, "that can get people's hackles up on the other side." Petersen thinks Respondent got caught up in becoming very close to the client and felt that he zealously had to do things to straighten out the situation at the company. Petersen thinks Respondent became close to the situation in trying to resolve all of the problems of the client in a relatively short period of time while Respondent received his own client's version of things which sometimes can affect

objectivity. (Tr. 216-227).

Testimony of Glen Canwitt

Glen Canwitt ("Canwitt") testified that he is an attorney who graduated from Swarthmore College in 1965 and from Columbia Law School in 1968. Upon graduation from law school he joined the law firm of Hopkins & Sutter where he was an associate for six years before becoming partner. Canwitt was a partner with Hopkins & Sutter until it merged with Foley & Lardner in 2001 where Canwitt remains a partner. Canwitt has known Respondent for almost thirty years. Canwit met Respondent through his wife who was friends with Respondent's wife. Canwitt and Respondent also had a case they worked on together in the 1970s. (Tr. 237-239).

Respondent asked Canwitt, who had some experience in tax litigation, advice about what Wittek should do in relation to a seizure controversy involving the Internal Revenue Service and Wittek. Canwitt was basically an expert consultant relating to Wittek's issue with the IRS and he functioned as co-counsel with Respondent in the Wittek takeover case. According to Canwitt, Respondent's representation of Wittek's Board of Directors was effective and honest and he

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thought Respondent displayed a high amount of integrity. Canwitt thought Respondent gave the Board of Directors a very high degree of professional, independent representation. (Tr. 240-241).

Canwitt testified that as a result of his association with Respondent he is aware of Respondent's character reputation. According to Canwitt, Respondent is a reputable person with a high reputation. Canwitt further stated that this does not mean that Respondent has not

made a mistake, but nobody is perfect. Canwitt stated if people's mistakes are an isolated instance that, to him, doesn't affect their integrity. Canwitt is familiar with the federal charges that were brought against Respondent, that Respondent was found guilty of those charges and was aware that Respondent was sentenced to time in prison. This information has not changed Canwitt's opinion of Respondent. (Tr. 242-244).

Testimony of Michael C. Osajda

Michael C. Osajda ("Osajda") testified that he is a commercial attorney and business ethics champion at Motorola. Osajda received a degree in foreign service and a master's of law in taxation from Georgetown University and he received his law degree from Northwestern University. Osajda spent eleven years in active duty in the United States Marine Corp. and remained in the Reserves for thirty years and retired as a Colonel of the United States Marine Corp.

Reserves. Osajda spent four years at Much, Shelist, Freed, Denenberg, Ament & Eiger, P.C. ("Much Shelist") and subsequently he became the Deputy General Counsel of Midway Airlines. Osajda spent a period of time in private practice and in 1979 went to Motorola where he is still employed. (Tr. 246-247).

In 1981 Osajda met Respondent after he was hired as an associate at Much Shelist where Respondent was then a partner. According to Osajda he worked under Respondent's tutelage

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and assisted Respondent on a number of projects in the securities area where Respondent had an expertise and on projects involving the redomestication of insurance companies. (Tr. 247-249).

Osajda stated Respondent is of extreme high moral character and he conducts himself, both professionally and personally, with extreme rectitude. Osajda is aware of the federal charges brought against Respondent, that he was found guilty of those charges and that Respondent was sentenced to seven years in prison. It was Osajda's understanding that there was no personal benefit in the transactions which led to the charges against Respondent. Osajda's stated Respondent's conviction has not changed his opinon of Respondent. (Tr. 250-253).

Testimony of Albert L. Grasso

Albert L. Grasso ("Grasso") testified that he is an attorney who has a master's degree in tax law and primarily concentrates his practice in tax and employee benefits law. Grasso began practicing law in Washington D.C. where he was employed by a small law firm. He obtained both his law degree and master's in tax law from Georgetown University. Grasso then went to work for the law firm Baker & McKenzie. Grasso then joined Much Shelist and became a partner at that law firm. While at Much Shelist Grasso became well acquainted with Respondent Grasso then went to form his own law firm in 1987 which is Chuhak & Tecson. Grasso has served in various capacities with the American Institute of Certified Public Accountants, although he is not a CPA himself. He has also taught taxation, estate planning and deferred compensation. (Tr. 257-258, 260-261).

In 1997 Respondent went to Grasso, in conjunction with his indictment, regarding questions Respondent had with respect to certain pension law matters and testified as an expert in Respondent's criminal case. (Tr. 259-260, 264-266).

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Grasso testified that it was not unreasonable for Respondent to rely on Drake Boutwell's advice since Boutwell was an acknowledged ERISA practitioner. It also would have been reasonable not to have followed Boutwell's advise, subsequent to extensive conferences with Boutwell, regarding real estate operating corporation matters that the pension plan should have a 100% interest in the Pineville Real Estate Operation Corporation since under the Department of Labor regulations, with respect to dealing with the definition of plan assets, it is clear that if you own 100% of an entity you are treated as owning the underlying assets of the entity. As soon as Boutwell's proposed structured is understood you know that you could not follow that advice because it would end up that you would be dealing directly with plan assets because of the 100% real estate holding entity. Grasso further testified that when he looked at the transaction he thought to himself that only someone who is familiar with the ERISA requirements would lay out the structure in this fashion and that person is not Respondent.

Grasso also knew that Boutwell was the partner who did ERISA work at the firm Respondent was with at that time and he thought that Respondent had to have consulted with Boutwell. Grasso also thought that there would have been a much simpler way of effecting that transaction. Grasso testified that besides Respondent's conviction, he believes Respondent could well serve the bar. (Tr. 274-275, 279-280, 282). (Tr. 282).

Testimony of Nicholas C. Hindman

Nicholas C. Hindman ("Hindman") is the Senior VicePresident and Chief Financial Officer of Westel Technologies. Hindman received an accounting degree from the University of Iowa and is a CPA. Hindman began

his career with Arthur Andersen which he left in 1977 to begin a career as a tax and insurance manager which he did until 1980. Since 1980 Hindman has
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had his own CPA firm. In 1980 he helped start Westel and became its CFO in 1999. Hindman has assisted in turning around troubled companies. (Tr. 395-396).
Hindman has known Respondent since the early 1980s when he met Respondent through a mutual client. Hindman stated Respondent contacted him to finish an audit that was delinquent with respect to Wittek's Plan. Hindman prepared an audit for the 6141 pension plan as of December 30, 1990 and he believed he prepared audits for other years, including 1991. (Tr. 396-403, 410, 419-425).
Hindman stated that due to his association with Respondent he is aware of Respondent's character which is very high. Hindman is aware of the federal charges which were brought against Respondent and of Respondent's conviction and sentencing and that has not changed his opinion of Respondent. (Tr. 439-440).
Testimony of Delores Marie Veninga
Delores Marie Veninga ("Veninga") testified that she graduated from Southern Methodist University School of Law in 1971 and then was a research student at Cambridge University for two years. Subsequently, Veninga headed up her family's real estate business in Dallas. In 1981 she was an associate at the law firm Katten, Muchin Pierce & Galler ("Katten"). After that, Veninga went back to Dallas and was associated with the firm Jones, Day Reavis & Pogue. In 1984 she joined the law firm McBride Baker & Coles ("McBride"). Respondent was a partner at McBride Baker & Coles when Veninga joined the firm. According to Veninga she worked with

Respondent the entire time she was with McBride Baker & Coles until she was terminated by that firm in 1991. (Tr. 452-453).

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According to Veninga, Mr. Schnitz, was instrumental in her termination from the McBride law firm. Veninga also testified that she is aware of the bias Schnitz has against Respondent to cause Schnitz to misrepresent things about Respondent. (Tr. 453-469).

Veninga further testified that while she was at McBride she was aware of Respondent's character amongst the partners and associates of that law firm. Respondent was held in the highest regard both as a person of integrity and as an excellent securities and corporate lawyer by the partners and associates. Also, when Veninga first joined the firm she understood that Respondent was the most financially successful attorney at McBride. Although Veninga left the firm prior to Respondent acquiring Wittek as a client, Respondent did ask Veninga to do work on behalf of Wittek. (Tr. 469-470, 471-475).

Veninga stated that from the time she worked with Respondent she was able to observe that Respondent would call in partners that were experts in particular areas that Respondent was not an expert in and he would follow their advice. Respondent would also question these experts about particular matters so that he would have a better understanding of the expert's proposals. (Tr. 476-477).

Veninga further testified that after she joined McBride she had conversations with former partners at Katten who knew Respondent. These partners held Respondent in great respect and were pleased that Veninga was working with Respondent. Veninga thinks Respondent is a very honorable man and that his background as a soldier has

given him a level of integrity which is somewhat unique. Veninga was co-counsel with Respondent on his criminal trial and is
aware that he was convicted, has served time and is currently on supervised release, but that has not changed her opinion of Respondent's reputation.
Veninga stated Respondent's conviction has affected his public reputation, but thinks that many in the legal and business community,
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including herself, still have great faith in Respondent and would allow Respondent to represent them if he is able to continue to practice law. (Tr.
477-480).

EVIDENCE OFFERED IN AGGRAVATION

Testimony of Robert Schnitz

Robert Schnitz ("Schnitz") testified the he is currently employed as one of two section's operations managers with the law firm of Holland & Knight. Schnitz currently does not practice law, but has been licensed to practice law for thirty years. (Tr. 30-31).
Schnitz testified that he knows Respondent since they were both partners at the law firm McBride Baker & Coles. Schnitz was a partner at that law firm from 1975 until it merged with Holland & Knight in 2002. Schnitz was also the managing partner at McBride Baker & Coles from 1998 until 2002. As managing partner, Schnitz was responsible for everything that went on at the law firm including management of the partners and the administrative staff. Schnitz was also responsible for keeping track of each partner's income. (Tr. 31-32).
Schnitz had a conversation with Respondent about his partnership income sometime in late 1991 or early 1992

because, although he had a couple of good years with respect to income, most of Respondent's years were not good. Schnitz discussed with Respondent his prospects for improving his financial performance. (Tr. 32-33).
Schnitz also testified that in the fall of 1992 he received notice from Respondent about a legal malpractice issue involved Pineville Real Estate Operating Company and Wittek. Respondent left Schnitz a couple of voice mail messages concerning his reported failure to record a deed with respect to property and the consequent intervention of other creditors that would result in a large malpractice claim. Based on Respondent's notice of the malpractice issue, the law firm reported this malpractice issue to their insurer. At about the same time they
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engaged an ERISA attorney, Peter Kelly, because it was apparent that there was a Plan involved in the malpractice issue and their firm did not currently have a lawyer within their firm with the expertise to advise the firm on what course of conduct should be followed. The firm also delegated three partners from their firm's management committee, including Schnitz, to investigate Respondent's malpractice issue. According to Schnitz, Respondent told the investigation committee some of the things they needed to know, but not everything. For example, initially the investigation committee thought that the transactions had been completed so the firm spent a couple of weeks creating rescission documents that would undo the transactions only to find out after furthur investigation that the transactions had not been completed. Also, based upon information from Respondent, the firm believed Viana was the trustee of the Plan when later, after Respondent left the

firm, it was discovered that Harris Bank was the trustee of the Plan. (Tr. 33-34).

Based upon Respondent's conduct Schnitz stated that the firm incurred several expenses. The firm was required to pay a penalty to Pension Benefit Guarantee Corp. after it sought to recover the amounts that had been taken from the Plan from the firm and from Harris Bank. Harris Bank and their insurer were responsible for the balance, which would have been approximately $600,000-$700,000 and the firm was responsible for $200,000 of which the firm paid $75,000 and the firm's insurer paid the remaining amount. The firm also spent $200,000 to employ Peter Kelly throughout this period for his advice regarding ERISA law. The firm also incurred a number of out-of-pocket expenses relating to production of documents, meetings with government agencies and the payment for a bond. These out-of-pocket expenses totaled between $50,000-$100,000. Additionally, the firm also had to dedicate a significant amount of attorney time to determine what happened with respect to Respondent's malpractice issue. Schnitz could

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not put a figure on the amount of attorney time his law firm spent in this matter. (Tr. 36-38, 51-52).

On cross examination, Schnitz recalled that Respondent resigned from the firm. The firm had given Respondent the choice of either terminating his representation of Wittek and making a recommendation to that client, or leaving the firm. Schnitz also recalled that if the firm was going to continue

representing Wittek, the firm would require Wittek to pay a large monthly retainer to the firm. Schnitz could not recall what the monthly retainer fee for Wittek was going to be if Wittek was to remain a client of the firm. (Tr. 39).

Schnitz also testified that prior to September of 1992 the firm had an ERISA attorney, Drake Boutwell, and as far as Schnitz knew Respondent consulted with Boutwell about ERISA issues although the firm encouraged consultation with Peter Kelly about such issues. (Tr. 40-42).
Schnitz further testified that he had conversations about Respondent's financial prospects because Respondent was not bringing in enough money to cover the draws and costs that he was receiving from the firm. In that type of situation, the usual remedy was for the partner to bring in more business or leave the firm. Schnitz recalled that Respondent incurred substantial obligations to the firm as a result of having people work on the Wittek matter. (Tr. 42-43, 46). Schnitz could not recall the specific details of the transaction relating to the property located in Pineville, North Carolina except that there were a series of transactions to get money to Harris Bank and then to Wittek. (Tr. 47).
Schnitz stated that Respondent led him to believe that Viana was the trustee while failing to inform him that Harris Bank was the trustee. Schnitz was told by the prosecutor in Respondent's criminal trial that Harris Bank "did not have authority to be trustee." Schnitz
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became aware that Viana was not the trustee when an associate, Bob Hirshhorn, of his firm went through the files in order to respond to the Department of Labor's subpoena and discovered documents that showed Manufacturer's Bank had been told that Harris Bank was the trustee and Viana was not so that Manufactuer's Bank would move funds from the Plan. Schnitz also testified that during this time
Harris Bank was the firm's primary bank. (Tr. 47-51).

FINDINGS OF FACT AND CONCLUSIONS OF LAW
Proceedings, such as this one, under Supreme Court Rule 761 (134 Ill. 2d R. 761), are not designed to re-litigate Respondent's guilt or innocence of the underlying criminal charges. In re Ciardelli, 118 Ill. 2d 233, 239, 514 N.E.2d 1006, 113 Ill. Dec. 94 (1987); In re Scott, 98 Ill. 2d 9, 16-18, 455 N.E.2d 81, 74 Ill. Dec. 51 (1983); See Supreme Court Rule 761(f) (134 Ill. 2d R. 761(f)). A proceeding under Rule 761 is designed to determine whether or not Respondent's criminal conduct warrants discipline and, if so, the discipline to be imposed. See Supreme Court Rule 761(d) (134 Ill. 2d R. 761(d)); In re Minneman, No. 98 SH 38 (Review Board Nov. 29, 2000), petition for leave to file exceptions denied,
No. M.R. 17352 (March 22, 2001).
Because an attorney is disciplined for his or her conduct, not for the conviction, consideration of the attorney's conduct is not only proper, but necessary, to an informed determination in the disciplinary case. See In re Crane, 23 Ill. 2d 398, 400-01, 178 N.E.2d 349 (1961). The Hearing Board, therefore, may consider evidence concerning the acts that led to the conviction, and the surrounding circumstances, in order to evaluate Respondent's actual conduct and determine the proper quantum of discipline. See Ciardelli, 118 Ill. 2d at 239-40; Scott, 98 Ill. 2d at 16; Crane, 23 Ill. 2d at 400.
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In this matter, the Administrator has charged Respondent with: committing criminal acts that reflect adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, in violation of Rule 8.4(a)(3) of the Illinois Rules of Professional Conduct; conduct involving dishonesty, fraud, deceit or misrepresentation in violation

of Rule 8.4(a)(4) of the Illinois Rules of Professional Conduct; and conduct that is prejudicial to the administration of justice, or which tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and Supreme Court Rule 771 (now known as Supreme Court Rule 770) states: Conduct of attorneys which violate the Rules of Professional Conduct contained in Article VIII of these rules or which tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute shall be grounds for discipline by the court. Discipline may be: disbarment; disbarment on consent; suspension for a specified period and until further order of court; suspension for a specified period of time; suspension until further order of court; suspension for a specified period of time or until further order of the court with probation; or reprimand by the court, the Review Board or a hearing panel. (Amended, effective Oct. 13, 1989; amended and renumbered March 23, 2004, effective April 1, 2004.)

The charges of misconduct against the Respondent are based upon his conviction stemming from a seven-count indictment in which Respondent was charged with conspiracy to commit wire fraud, money laundering and theft. Respondent was found guilty of each charge set forth in the indictment, and in May of 1998 was sentenced to eighty-four months imprisonment and ordered to pay restitution in the amount of $735,566. On December 21, 1999, Respondent's conviction was affirmed by the U. S. Court of Appeals for the 7th Circuit on direct appeal. (See U.S. v. Hook, No. 98-2420 (7th Cir. 1999); Adm. Exs. 1-2). It is a well-established and long-standing principle that a criminal conviction of an attorney for a crime involving

moral turpitude is conclusive evidence of the attorney's guilt and grounds for discipline. See Ciardelli, 118 Ill. 2d at 239; In re Callas, 82 Ill. 2d 6, 14, 411 N.E.2d 271, 277 (1980); In re Steinbrecher, 53 Ill. 2d 413, 420, 292 N.E.2d 422, 425 (1973). In

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Ciardelli, for example, the Court stated that it "has held in many cases that the conviction of a crime involving moral turpitude is conclusive evidence of the respondent's guilt and that grounds for the imposition of discipline exist." Ciardell, 118 Ill. 2d at 239. Moral turpitude includes conduct "done knowingly contrary to justice, honesty, or good morals" or that involves "fraud or fraudulent conduct." In re Needham, 364 Ill. 65, 70, 4 N.E.2d 19, 21 (1936); In re Vavrik, 117 Ill. 2d 408, 412-13, 512 N.E.2d 1226, 1228 (1987). See also In re Teitelbaum, 13 Ill. 2d 586, 589, 150 N.E.2d 873, 875 (1958)..

There is no doubt that the crimes for which Respondent was convicted involved moral turpitude and reflected adversely on his honesty, truthfulness, and fitness as an attorney. Thus, based upon the foregoing principles, the evidence clearly and convincingly established the misconduct charged in the complaint warrants the recommendation of Respondent's disbarment. In making this recommendation, we find several decisions particularly instructive. The court in In re Fumo, 52 Ill. 2d 307, 288 N.E.2d 9 (1972) and In re Hutul, 54 Ill. 2d 209, 296 N.E.2d 332 (1973), stated the well-established rule of law that a conviction of a crime involving moral turpitude is conclusive evidence of an attorney's guilt and a ground for disbarment. In those cases, the attorneys were convicted on multiple counts of mail fraud. In In re Vavrik, 117 Ill. 2d 408, 512 N.E.2d 1226 (1987), where the attorney was

disbarred based on his misconduct in embezzling funds, the court stated that moral turpitude is shown when the crime involved fraud or fraudulent conduct, and that any act that demonstrates a lack of personal honesty or integrity may be sufficient to warrant disbarment.

In this case, a seven-count indictment against Respondent charged him with conspiring with Carmen Viana to commit wire fraud, money laundering and theft.

Following the holdings in Fumo, Hutul and Vavrik, we find that Respondent's conviction of the charges involving

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fraudulent conduct involving money laundering, the unlawful conversion of pension plan assets and wire fraud for misrepresentations occurring in the July 15, 1992 and July 30, 1992 communications to the Bank of Detroit (Tr. 811-813), there is conclusive evidence of Respondent's guilt of crimes involving moral turpitude which is the basis for a recommendation of disbarment.

RECOMMENDATION

The Supreme Court of Illinois has stated that, "[o]ur attorney disciplinary proceedings are designed to safeguard the public and maintain the integrity of the legal profession." In re Levin, 77 Ill.2d 205, 211, 395 N.E.2d 1374 (1979).

"The Rules of Professional Conduct recognize that the practice of law is a public trust and lawyers are the trustees of the judicial system." In re Smith, 168 Ill. 2d at 269, 287, 659 N.E.2d 896 (1995). The purpose of the disciplinary system is not to punish an attorney, but to safeguard the public and protect the integrity of the legal profession. In re Goldstein, 103 Ill.2d 123, 468 N.E.2d 959 (1984).

Additionally, the final determination of appropriate sanctions in attorney disciplinary proceedings necessarily

involves analysis of the unique facts and circumstances of the particular case. See In re Crisel, 101 Ill.2d 332, 461 N.E.2d 994 (1984).

In this case, the Administrator has requested the sanction of disbarment and, in support thereof, cited the following cases: In re Powell, 126 Ill. 2d 15, 533 N.E.2d 831 (1988);In re Fumo, 52 Ill. 2d 307, 288 N.E.2d 9 (1972); In re Minneman, 98 SH 38, M.R. 17352, March 22, 2001 (Review Board Report, pp. 6-7).

The Administrator also discussed how In re Cueto, 97 SH 100, M.R. 19679 (Nov. 17, 2004), although being procedurally different from this matter, resulted in Cueto's disbarment. The Respondent has requested that the suspension issued in

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1998 against him should serve as his punishment in this matter. After reviewing the cases cited by the Administrator, we recommend that Respondent be disbarred.

In Fumo, the disciplinary charges were based on the attorney's guilty plea to a multi-count indictment in federal court arising out of a scheme with a physician "to defraud and obtain money under false pretenses from certain insurance companies and from his own clients." He was sentenced to a 3-year term of probation, with the conditions that he serve the first 60 days in jail, pay a fine of $5,000, and pay restitution. Fumo, 52 Ill. 2d at 308. In mitigation, the attorney presented evidence that he served the 60-day jail term, paid the fine, and made full restitution as ordered by the court. He also presented witnesses who testified that he had a good reputation for honesty and integrity and that he was an upstanding member of the community. Additionally, there was evidence that the attorney's son had

a serious illness and the "efforts to cure the affliction had created an extraordinary financial burden upon him." Id. at 309. The Court pointed out that the attorney's misconduct was "not an isolated
aberration," but rather was "a deliberate, calculated series of individual acts, over an extended period of time, all designed to extract funds from insurance companies, as well as from his own clients." Id. at 310. The Court concluded that the misconduct demonstrates "a lack of fidelity to private trust, tends to defeat the administration of justice and to bring the legal profession into disrepute." Id. at 310-11. The attorney was disbarred.

In Powell, the attorney arranged for his client to post a certificate of deposit as collateral for a $10,000 bank loan to a judge. The judge was presiding in a civil case involving the client. A few days after the judge received the loan, he ruled in favor of the attorney's client. Powell, 126 Ill. 2d at 20-21. In mitigation, the attorney presented eight witnesses who testified that he had a good reputation for honesty and integrity. Id. at 31. The Court described the attorney's
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misconduct as "shocking" and with the motive of trying to "curry favor with the judge." Id. at 24, 26, 30. The Court also pointed out that the attorney's actions in making "arrangements for the loan extended over a period of several days" and, thus, his misconduct "was not a quick and unreasoned failure of judgment, but rather a deliberate course of conduct." Id. at 31-32. Finally, the Court stated that "where an ethical violation is of sufficiently serious character, such as that considered here, a single act of misconduct may warrant disbarment." Id. at 31. Powell was disbarred.

In Minneman, the Court disbarred an attorney who was convicted of conspiracy to commit tax fraud based upon use of his client's trust account to conceal the nature of his client's income which totaled over $700,000. In the Review Board's reliance on the Hearing Board's recommendation to disbar the attorney, it stated that the attorney acted in a knowing, willful and deceitful manner to hide a large portion of his client's income, for the purpose of evading payment of income taxes over a three-year period. The Review Board also agreed with the Hearing Board's findings of fact that this attorney's misconduct was not isolated, nor a quick and unreasoned failure of judgment. Rather, his misconduct consisted of deliberate, calculated series of individual acts over an extended time. The attorney engaged in criminal conspiracy with a client and used his special skills as a lawyer to facilitate the crime. The attorney also benefited financially from the scheme; however the attorney lacked an understanding of his ethical obligations and the seriousness of his misconduct. The Review Board noted that despite the presentation of some favorable character evidence and the absence of prior discipline, the Hearing Board regarded disbarment as necessary to protect the public, given the level of dishonesty involved. Minneman, 98 SH 38 (Review Board Report at pp. 6-7).

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We find the language in the decisions discussed above very instructive. In particular, in disbarring Minneman, the Review Board emphasized that despite that presentation of some favorable character evidence and absence of prior discipline, it was necessary to disbar Minneman to protect the public due to the level of dishonesty involved. Respondent, like Minneman, was convicted of a crimes

involving moral turpitude which is conclusive evidence of an attorney's guilty and a ground for disbarment. Additionally, in this Hearing Board Panel's opinion, Respondent's conduct was even more egregious than Minneman's since Respondent was convicted of conspiracy to commit wire fraud, money laundering and theft. Respondent has made no effort to apologize or explain his actions to members of his former law firm, Harris Bank or the Pension Benefit Guarantee Fund. Also, Respondent has not made a significant dent in restoring a significant portion of the $735,566 court ordered restitution.

We find that Respondent exhibited no signs of remorse; instead he remains steadfast in his proclamation of innocence although two courts have already ruled otherwise. The evidence, including Respondent's lengthy testimony during this hearing, clearly demonstrates Respondent's lack of remorse and that he still fails to comprehend the wrongfulness or serious nature of his misconduct despite serving a significant amount of time in prison. These matters are properly considered as aggravating factors. See In re Lewis, 138 Ill. 2d 310, 348, 562 N.E.2d 198, 214 (1990); In re Rinella, 175 Ill. 2d at 518, 677 N.E.2d at 916) and In re Samuels, 126 Ill. 2d 509, 531, 535 N.E.2d 808, 817 (1989). In Samuels, the Court stated: "Respondent still believes he acted properly, which does not inspire confidence that respondent is ready to recognize his duty as an attorney and to conform his conduct to that required by the profession."

Although we do not consider the Respondent's continued assertion of innocence as an aggravating factor, (See In re Wigoda, 77 Ill. 2d 154, 160-61, 395 N.E.2d 571, 574 (1979)) we

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do find that his claim of innocence "strains credulity" and "is preposterous" in light of the evidence before us. See In re Hutul, 54 Ill. 2d at 216, 296 N.E.2d at 336; Minneman, 98 SH 38, Review Board Report, p. 7.

During this hearing, Respondent was allowed to present substantial mitigating evidence regarding the events which he believed lead to his federal conviction.

The basis of the Hearing Board Chair allowing such a significant amount of mitigating evidence regarding the events relating to the underlying conviction was the Review Board's rationale found in In re Cueto, 97 SH 100, M.R. 19679 (Nov. 17, 2004). In that case the Review Board recommended that the matter be remanded for a new hearing in order to allow the Respondent to raise as a circumstance regarding his conviction the underlying involvement of the

representatives of the ARDC in the Respondent's criminal prosecution. Ultimately the Review Board agreed with the Hearing Board's initial recommendation of the Respondent's disbarment. Id. In this matter Respondent expressed the view that such evidence was not presented in an effort to go behind the federal conviction, but was relevant in determining what the crimes were and what the appropriate punishment is, if any. Respondent also stated that the basis of his federal conviction was not conduct that would be regarded as a crime under Illinois law and that it did not involve moral turpitude. Respondent's presentation of substantial evidence, including numerous exhibits was done, in his opinion, to demonstrate the extraordinary efforts Respondent went to protect the interests of all parties. We have considered whether the evidence offered in mitigation showed that Respondent acted in such a manner to warrant a lesser sanction than disbarment in this

matter and if Respondent is currently aware of how his conduct violated the Illinois Rules of Professional Conduct as charged in the Administrator's Complaint; however since we have heard and weighed all of the mitigating evidence presented with respect to the
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events relating to Respondent's underlying conviction we still come to the conclusion that Respondent is guilty of the charges presented in the seven-count indictment and thus we consequently find that the Administrator proved by clear and convincing evidence that the Respondent committed the above-referenced misconduct as charged in the complaint. Therefore, based upon our findings we cannot conclude that the mitigating evidence presented (however extensive it
was) warrants this Hearing Panel to issue a recommendation of a sanction less than disbarment in this matter. Based upon the totality of the mitigating and aggravating evidence presented during this hearing, we strongly recommend disbarment as the appropriate sanction for the Respondent.
CONCLUSION
Due to the nature of Respondent's misconduct, we recommend that Respondent be disbarred.
Date Entered: July 26, 2005
Joseph A. Barthlomew, William E. Hornsby, Jr.
and Albert C. Baldermann concurring

CONSTITUTIONAL AND STATUTORY PROVISIONS

The following Constitutional and Statutory provisions are involved herein:

Article I, § 10, Cl. 1:

No State shall...pass any Bill of Attainder.

Article III, § 1:

The judicial Power of the United States, shall be vested in one supreme Court...

Article III, § 2, Cl. 1:

The judicial Power shall extend to all Cases in Law and Equity, arising under this Constitution, the Laws of the United States...or which shall be made under their Authority...

Article III, § 2, Cl. 2:

...In all other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Article IV, § 2:

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens of the several States.

5th Amendment:

No person shall be...deprived of life, liberty or property, without due process of law.

6th Amendment:

In all criminal prosecutions, the accused shall enjoy the right... to be confronted with the witnesses against him;

8th Amendment:

...nor cruel and unusual punishments inflicted.

14th Amendment, § 1:

...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 USC 1257(a):

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn

in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

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Illinois Supreme Court Rule 19: Notice of Claim of Unconstitutionality.

(a) Notice Required. In any cause or proceeding in which the constitutionality of a statute, ordinance, or administrative regulation affecting the public interest is raised, and to which action or proceeding the State or the political subdivision, agency, or officer affected is not already a party, the litigant raising the constitutional issue shall serve an appropriate notice thereof on the Attorney General, State's Attorney, municipal counsel or agency attorney, as the case may be. (b) Contents and Time for Filing Notice. The notice shall identify the particular statute, ordinance, regulation, and shall briefly describe the nature of the constitutional challenge. The notice shall be served at the time of suit, answer or counterclaim, if constitutionality is raised at that level, or promptly after the constitutional question arises as a result of a circuit or reviewing court ruling or judgment. (c) Purpose of Notice. The purpose of such notice shall be to afford the State, political subdivision, agency or officer, as the case may be, the opportunity, but not the obligation, to intervene in the cause or proceeding for the purpose of defending the constitutionality of law or regulation challenged. The election to intervene shall be subject to applicable

provisions of law governing intervention or impleading of interested parties. (As in effect at the relevant time.)

Illinois Supreme Court Rule 761(b):Conviction of Crime Involving Moral Turpitude.

If an attorney is convicted of a crime involving fraud or moral turpitude, the Administrator shall file a petition with the court alleging the fact of such conviction and praying that the attorney be suspended from the practice of law until further order of the court. A certified copy of the judgment of conviction shall be attached to the petition and shall be *prima facie* evidence of the fact that the attorney was convicted of the crime charged. Upon receipt of the petition the court shall issue a rule to show cause why the attorney should not be suspended from the practice of law until the further order of the court. After consideration of the petition and the answer to the rule to show cause, the court may enter an order, effective immediately, suspending the attorney from the practice of law until the further order of the court.

Illinois Supreme Court Rule 761(d): Hearing.

Where an attorney has been convicted of a crime involving fraud or moral turpitude, a hearing shall be conducted before the Hearing Board to determine whether the crime warrants discipline, and, if so, the extent thereof. (1) If the attorney has not appealed from the conviction, the Administrator shall file a complaint with the Hearing Board alleging the fact of the conviction. (2) If the attorney has appealed from the conviction, the hearing shall be delayed until completion of the appellate process unless the attorney

requests otherwise. If after the completion of the appellate process the conviction has not been reversed, the attorney shall notify the Administrator within 30 days of the mandate being filed in the trial court that the conviction was affirmed. Upon becoming aware that the conviction has been affirmed, the Administrator shall file a complaint with the Hearing Board as described in (1) above.

Illinois Supreme Court Rule 761(f): Proof of Conviction.

In any hearing conducted pursuant to this rule, proof of conviction is conclusive of the attorney's guilt of the crime.

Illinois Supreme Court Rule 770: Types of Discipline.

Conduct of attorneys which violates the Rules of Professional Conduct contained in article VIII of these rules or which tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute shall be grounds for discipline by the court. Discipline may be: (a) disbarment; (b) disbarment on consent; (c) suspension for a specified period and until further order of court; (d) suspension for a specified period of time; (e) suspension until further order of the court; (f) suspension for a specified period of time or until further order of the court with probation; (g) censure; or (h) reprimand by the court, the Review Board or a hearing panel.